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AN ACT

RELATING TO LONG-TERM CARE; ENACTING THE PATIENT CARE
MONITORING ACT; ESTABLISHING AUTHORIZATION AND USE OF
MONITORING DEVICES; PROVIDING FOR WAIVERS; PROVIDING FOR
ENFORCEMENT AND PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Patient Care Monitoring Act".

Section 2. DEFINITIONS.--As used in the Patient Care
Monitoring Act:

A. "agency" means the state agency on aging;

B. "facility" means a long-term care facility
licensed pursuant to the provisions of Section 24-1-5 NMSA
1978, other than an intermediate care facility for the
mentally retarded, and may also include:

(1) a skilled nursing facility;

(2) an intermediate care nursing facility;

(3) a nursing facility;

(4) an adult residential shelter care home;

(5) a boarding home;

(6) any adult care home or adult residential
care facility; and

(7) any swing bed in an acute care facility
or extended care facility;

1 C. "monitoring device" means a surveillance
2 instrument that broadcasts or records activity, but does not
3 include a still camera;

4 D. "patient" means a person who is a resident of a
5 facility;

6 E. "program" means the New Mexico long-term care
7 ombudsman program; and

8 F. "surrogate" means a legal guardian or a legally
9 appointed substitute decision-maker who is authorized to act
10 on behalf of a patient.

11 Section 3. MONITORING DEVICE--AUTHORIZATION AND USE.--

12 A. A patient or a surrogate may authorize
13 installation and use of a monitoring device in a facility
14 provided that:

15 (1) the facility is given notice of the
16 installation;

17 (2) if the monitoring device records
18 activity visually, such recording shall include a record of
19 the date and time;

20 (3) the monitoring device and all
21 installation and maintenance costs are paid for by the
22 patient; and

23 (4) written consent is given by each patient
24 or surrogate of each patient occupying the same room.

25 B. The patient may establish and the facility

1 shall accommodate limits on the use, including the time of
2 operation, direction, focus or volume, of a monitoring
3 device.

4 Section 4. MONITORING DEVICE OPTION--INSTALLATION--
5 ACCOMMODATION BY FACILITY.--

6 A. At the time of admission to a facility, a
7 patient shall be offered the option to have a monitoring
8 device, and a record of the patient's authorization or choice
9 not to have a monitoring device shall be kept by the facility
10 and shall be made accessible to the program.

11 B. After authorization, consent and notice, a
12 patient or surrogate may install, operate and maintain a
13 monitoring device in the patient's room at the patient's
14 expense.

15 C. The facility shall cooperate to accommodate the
16 installation of the monitoring device, provided the
17 installation does not place undue burden on the facility.

18 Section 5. CONSENT--WAIVER.--

19 A. Consent to the authorization for the
20 installation and use of a monitoring device may be given only
21 by the patient or the surrogate.

22 B. Consent to the authorization for the
23 installation and use of a monitoring device shall include a
24 release of liability for the facility for a violation of the
25 patient's right to privacy insofar as the use of the

1 monitoring device is concerned.

2 C. A patient or the surrogate may reverse a choice
3 to have or not have a monitoring device installed and used at
4 any time, after notice to the facility and to the program
5 upon a form prescribed by the agency.

6 Section 6. AUTHORIZATION FORM--CONTENTS.--The form for
7 the authorization of installation and use of a monitoring
8 device shall provide for:

9 A. consent of the patient or the surrogate
10 authorizing the installation and use of the monitoring
11 device;

12 B. notice to the facility of the patient's
13 installation of a monitoring device and specifics as to its
14 type, function and use;

15 C. consent of any other patient or that patient's
16 surrogate sharing the same room;

17 D. notice of release from liability for privacy
18 violation through the use of the monitoring device; and

19 E. waiver of the patient's right to privacy in
20 conjunction with the use of the monitoring device.

21 Section 7. IMMUNITY--UNAUTHORIZED USE.--

22 A. In any civil action against the facility,
23 material obtained through the use of a monitoring device may
24 not be used if the monitoring device was installed or used
25 without the knowledge of the facility or without the

1 prescribed form.

2 B. Compliance with the provisions of the Patient
3 Care Monitoring Act shall be a complete defense against any
4 civil or criminal action brought against the patient,
5 surrogate or facility for the use or presence of a monitoring
6 device.

7 Section 8. NOTICE TO CURRENT PATIENTS.--Within six
8 months of the effective date of the Patient Care Monitoring
9 Act, all facilities shall provide to each patient or
10 surrogate a form prescribed by the agency explaining the
11 provisions of the Patient Care Monitoring Act and giving each
12 patient or surrogate a choice to have a monitoring device
13 installed in the patient's room. Copies of the completed
14 form shall be kept by the facility and shall be made
15 accessible to the program.

16 Section 9. NOTICE.--The facility shall post a notice in
17 a conspicuous place at the entrance to a room with a
18 monitoring device that a monitoring device is in use in that
19 room of the facility.

20 Section 10. RULES.--The agency shall adopt rules
21 necessary to implement the provisions of the Patient Care
22 Monitoring Act.

23 Section 11. PROHIBITED ACTS.--No person or patient
24 shall be denied admission to or discharged from a facility or
25 be otherwise discriminated against or retaliated against

1 because of a choice to authorize installation and use of a
2 monitoring device. Any person who violates this section
3 shall be subject to the provisions of Section 28-17-19 NMSA
4 1978.

5 Section 12. CRIMINAL ACTS.--Any person other than a
6 patient or surrogate found guilty of intentionally hampering,
7 obstructing, tampering with or destroying a monitoring device
8 or a recording made by a monitoring device installed in a
9 facility pursuant to the Patient Care Monitoring Act is guilty
10 of a fourth degree felony and shall be sentenced pursuant to
11 Section 31-18-15 NMSA 1978.

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